

H9SAAMEDC

Conference

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

MEDIDATA SOLUTIONS, INC. and  
MDSOL EUROPE LIMITED,

Plaintiffs,

v.

17 CV 589 (LGS)

VEEVA SYSTEMS INC.,

Defendant.

-----x

New York, N.Y.  
September 28, 2017  
11:20 a.m.

Before:

HON. LORNA G. SCHOFIELD,

District Judge

APPEARANCES

KIRKLAND & ELLIS LLP  
Attorneys for Plaintiffs Medidata  
BY: CLAUDIA E. RAY  
JOSEPH A. LOY

KEKER, VAN NEST & PETERS LLP  
Attorneys for Defendants Veeva  
BY: CHRISTA ANDERSON  
KEVIN J. BRUNO

H9SAAMEDC

Conference

1 (Case called)

2 MS. RAY: Claudia Ray, of Kirkland & Ellis, your  
3 Honor.

4 THE COURT: Good morning.

5 MR. LOY: Joseph Loy, also of Kirkland & Ellis, your  
6 Honor.

7 MS. RAY: And also with us, your Honor, is Rick  
8 Goldstein, Senior Vice President and Deputy General Counsel at  
9 Medidata.

10 THE COURT: Good morning. You may be seated, first  
11 table.

12 MS. ANDERSON: Good morning, your Honor.

13 Christa Anderson, on behalf of Veeva Systems.

14 MR. TILLERY: Khari Tillery, on behalf of Veeva  
15 Systems.

16 MR. BRUNO: Kevin Bruno, Veeva.

17 MR. HAMILTON: Good morning, your Honor.

18 Andrew Hamilton, also on behalf of Veeva.

19 THE COURT: Good morning, everyone. You may be  
20 seated.

21 So we have a number of things to talk about. I guess  
22 the most recent development that I saw was a second amended  
23 complaint was filed September 20. I wanted to ask the  
24 plaintiffs if you could just summarize for me what the  
25 differences are and tell me how different it is.

H9SAAMEDC

Conference

1 MS. RAY: Yes, your Honor.

2 The differences are that we've added some additional  
3 detail regarding the nature of the trade secrets at issue and  
4 also some of the context in which we think the misappropriation  
5 occurred regarding the conduit from former employees of  
6 Medidata to Veeva, but the overall nature of the allegations  
7 remains the same.

8 THE COURT: OK. One of the things I wondered and I'm  
9 not sure if this a question for you or a question for the  
10 defendants, is one of the issues, of course, was motion to  
11 compel arbitration was how intertwined the issues are between  
12 the issues in the case and what the complaint alleges versus  
13 what is subject to arbitration. And I'm wondering, at least in  
14 the plaintiff's view, does this change anything?

15 MS. RAY: No, your Honor, in the plaintiff's view this  
16 does not change anything. We have some additional detail, as I  
17 said, regarding the existing facts that were pled in the  
18 original complaint but the overall nature of the narrative has  
19 not changed and the nature of the relationship between the  
20 parties has not changed at all.

21 THE COURT: OK. So I see that we've already discussed  
22 a date to answer or move and that is October 11. Do the  
23 defendants know yet which you will be doing?

24 MS. ANDERSON: Your Honor, this is Christa Anderson on  
25 behalf of Veeva. We actually do have some motions we'd like to

H9SAAMEDC

Conference

1 bring in response. We are still evaluating the complaint  
2 obviously, we just received it least week. But if it's  
3 permissible for your Honor we'd like to respond to the question  
4 your Honor raised about the new allegations.

5 We have been evaluating the allegations of the second  
6 amended complaint. We do believe that the added allegations  
7 further support our motion to compel arbitration and we do  
8 understand the judge had denied a motion originally. In the  
9 course of evaluating those allegations we observed that they  
10 have added great detail about alleged obligations under these  
11 contracts that are required to be arbitrated regarding  
12 obligations concerning retention of documents, return of  
13 documents, et cetera. They've add allegations regarding  
14 alleged misconduct by the employees, not by Veeva but alleged  
15 misconduct by employees and how they alleged that they are  
16 harmed and they have added allegations regarding relief sought.

17 So we have been looking at authority to try to assess  
18 to what extent we need to bring that to your Honor's attention  
19 by virtue of a motion. We have been researching it and it  
20 appears to actually be somewhat of a conflict of authority  
21 about what is the right procedure to do that. So we were  
22 hoping with your Honor's permission that we could file a brief  
23 letter brief to your Honor explaining what we believe is the  
24 appropriate procedure to make sure that we have not waived our  
25 right on appeal to make arguments concerning the new

H9SAAMEDC

Conference

1 allegations of the second amended complaint.

2 THE COURT: That is fine with me. I would just say  
3 that in terms of my decision making, I'm not going to get hung  
4 up on whether you cite one rule versus another as the grounds  
5 for asking the Court to consider the question in light of new  
6 allegations in the complaint. But if your concern is about  
7 preserving something for appeal, obviously, you need to do what  
8 ever you need to do.

9 MS. ANDERSON: Thank you.

10 THE COURT: So that's fine, but let me ask this. I  
11 know that there is currently an interlocutory appeal of the  
12 motion denying -- well, an appeal of my order denying the  
13 motion to compel arbitration. And does that affect that in  
14 other words, does it moot the appeal?

15 MS. ANDERSON: We are also researching that but we  
16 believe what would happen is, for example, another motion to  
17 compel arbitration, your Honor, were your Honor to deny that  
18 motion, we believe at present our research indicates we would  
19 also appeal that order and seek consolidation so that the Court  
20 could consider them collectively.

21 THE COURT: If that's the case, if what it is is a new  
22 motion on a new complaint, I don't understand how the old  
23 appeal or the old decision could still be live in any way or  
24 relevant even.

25 MS. ANDERSON: Well, you raise a very good question.

H9SAAMEDC

Conference

1 With you have not had enough time to come to perfect bound on  
2 right legal answer to that but that is exactly what we have we  
3 have been looking at is were this procedure to layout how the  
4 Second Circuit would treat that.

5 THE COURT: In som sense that's their problem, not  
6 mine. OK. So, thank you.

7 MS. ANDERSON: Thank you.

8 THE COURT: There is also a pending motion to stay  
9 during the pendency of the appeal and seems to me that based on  
10 everything you have said that the appeal is likely to be moot.  
11 I know you are still looking at it. I haven't looked it at all  
12 but just as a matter of common sense, unless it's your position  
13 which it's not that all the same arguments and all the same  
14 facts apply to the new complaint and new complaint changes  
15 nothing, then it seems to me that your appeal is not something  
16 that is going to go very far. And I mean I can march through  
17 the factors that are cited in your letters but it doesn't seem  
18 to me there's any basis to stay the proceedings. But if you  
19 want to be heard on that, I'll listen.

20 MS. ANDERSON: Yes, your Honor.

21 Well, we do believe that in this case and we  
22 understand again your Honor did not agree with our original  
23 motion but we do believe that that case should be stayed  
24 pending whatever appeal there might be to any further order.  
25 We have not reached ground on legal research. Perhaps, it

H9SAAMEDC

Conference

1 might be advisable to address that as well to your Honor in a  
2 supplemental letter brief so that your Honor could have the  
3 information before her in making this decision.

4 But should your Honor find that you're not willing to  
5 compel arbitration you would certainly be -- without a stay in  
6 place. Effectively the benefits of arbitration are denied. So  
7 we believe we belong in arbitration. We would like that  
8 relief. And without that happening there is this form of  
9 irreparable injury contrary to statements in Medidata counsel's  
10 letter where you have a motion to compel arbitration that is  
11 irreparable injury, that is harm because that's the point of  
12 arbitrating.

13 THE COURT: Well, you are not a party to any  
14 arbitration agreement. I don't want to rehash all of that.  
15 I'm sure we will do it again when you make your application.  
16 But given what I've decided it's hard to find all of that very  
17 compelling.

18 MS. ANDERSON: We understand.

19 THE COURT: Let me hear from the plaintiff.

20 MS. RAY: Thank you, your Honor.

21 We don't believe the material facts that relate to the  
22 motion to compel arbitration and any motion to stay pending the  
23 appeal have changed. What we did in the amended complaint was  
24 add a detail. So for example, provisions of contracts are not  
25 quoted. We don't think that changes anything. The Court found

H9SAAMEDC

Conference

1 that the case presents substantially a similar circumstance to  
2 the Second Circuit's decision in Sokel. We think that relates  
3 to the situation here. And you can see a line of cases going  
4 to Sokel to Ross to as recently as Judge Rakoff's decision in  
5 Document Technology this past April up to your Honor's decision  
6 in August. They are all on point and it's very consistent. We  
7 also think that the appeal doesn't have legs and that the  
8 amended complaint does not change that.

9 THE COURT: OK. So I think maybe the best thing for  
10 me to do is get a letter from each side and I'll take the  
11 defendant's letter in a week and then the plaintiff's letter a  
12 week later. And until then I will reserve on setting a  
13 discovery schedule.

14 And also, I guess you'll tell me whether or not you  
15 plan to formally renew your motion to compel arbitration or  
16 whether you'd like me to deem your letter as such or what you  
17 want to do. I'll leave it up to the defendants in the first  
18 instance.

19 MS. ANDERSON: Understood.

20 Thank you, your Honor.

21 THE COURT: OK. I normally limit letters to three  
22 pages but let's do five because it seems like we have a couple  
23 issues that need to be discussed. In the event that I don't  
24 stay discovery I don't want to have another conference. So why  
25 don't we just talk hypothetically. If I were to set a



H9SAAMEDC

Conference

1 discovery schedule now, you've asked for essentially looks like  
2 about two months longer than what my normal discovery schedule  
3 would contemplate. Tell me a little bit about the discovery  
4 you envision in the case and why you think it would take us  
5 until March to do fact discovery.

6 MS. RAY: Your Honor, we think that there are  
7 certainly going to be a fair amount of electronic discovery  
8 here. We're mindful of the Court's rules limiting the time for  
9 that. The parties have been talking about whether we think  
10 that's feasible here. We think we might need a bit more time.  
11 Given the number of individuals that we're likely to have at  
12 issue with both companies, we think we would need the  
13 additional time for fact to discovery and given the holiday  
14 period we think that's a factor as well.

15 THE COURT: OK. Let me just say a word about the  
16 electronic discovery. My individual rules that limit the time  
17 and amount of electronic discovery are really intended to get  
18 the parties before me if you have a case that's bigger than  
19 that so that we make sure that we're all talking about it and  
20 that there's some judicial supervision of the E-Discovery. So  
21 if you both agreed that you need to do more than what is  
22 contemplated, feel free to agree and submit it to me or if you  
23 disagree, feel free to ask for a conference so we can talk  
24 about it. OK?

25 MS. ANDERSON: OK.

H9SAAMEDC

Conference

1 THE COURT: But that is putting the cart ahead of the  
2 horse. So I look forward to your letters.

3 Is there anything else we should talk about today?

4 MS. RAY: No, I don't believe so, your Honor.

5 MS. ANDERSON: No. Thank you, your Honor.

6 THE COURT: OK. Thank you very much.

7 (Adjourned)